

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2013070285

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On October 10, 2013, Victor Elementary School District (District) filed a second request to continue the dates in this matter. District requests the continuance because the parties are awaiting results of agreed upon independent educational evaluations (IEE'S) and the parties have agreed to convene two individualized education program (IEP) team meetings on October 17, 2013 and November 14, 2013, to review the IEE'S. District further represents that the parties have agreed to dates for mediation, prehearing conference (PHC), and a due process hearing, if they are unable to resolve the matter after they have obtained the results of the IEE'S and conducted the IEP team meetings. The agreed upon dates for the due process hearing are approximately 90 days from the date initially set for the hearing. Student has not opposed this motion.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH granted the parties' first request for continuance on August 15, 2013. Since that time, Student has retained counsel, and the parties have participated in a resolution session, agreed to psychoeducational and occupational therapy IEE'S, and have scheduled two IEP team meetings on agreed dates to consider IEE reports. Thus, although second continuances are disfavored, good cause has been shown for a second brief continuance in this matter. No other request for continuance is expected for any reason.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. This matter will be set as follows:

Mediation:	November 19, 2013, at 9:30 a.m.
Prehearing Conference:	November 25, 2013, at 1:00 p.m.
Due Process Hearing:	December 3 and 4 beginning at 9:00 a.m., December 9, 2013, beginning at 1:30 p.m. (OAH sets hearings for 1:30 p.m. on Mondays), and December 10, 2013, beginning at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: October 21, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings